

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

LAWRENCE SMITH,

Plaintiff,

v.

9:12-CV-1474
(GTS/DEP)

ALBERT PRACK, Director of Special Housing;
BRIAN CHUTTEY; M. PARISH, C.O.;
D. VITALE, C.O.; and E. VAN NESS, C.O.;

Defendants.

APPEARANCES:

OF COUNSEL:

LAWRENCE SMITH, 93-A-0080

Plaintiff, *Pro Se*
Attica Correctional Facility
Box 149
Attica, New York 14011

HON. ERIC T. SCHNEIDERMAN
Attorney General for the State of New York
Counsel for Defendants
The Capitol
Albany, New York 12224

MICHAEL G. McCARTIN, ESQ.

GLENN T. SUDDABY, United States District Judge

DECISION and ORDER

Currently before the Court, in this *pro se* prisoner civil rights action filed by Lawrence Smith (“Plaintiff”) against the five above-captioned correctional employees at Auburn Correctional Facility in Auburn, New York (“Defendants”) assertion a due process claim and a retaliation claim, are (1) Defendants’ motion for summary judgment, (2) Plaintiff’s motion of December 14, 2014, seeking reconsideration of the undersigned’s Decision and Order of January 27, 2014, and (3) United States Magistrate Judge David E. Peebles’ Report-Recommendation

recommending that Defendants' motion for summary judgment be granted, Plaintiff's motion for reconsideration be denied, and Plaintiff's Amended Complaint be dismissed in its entirety. (Dkt. Nos. 36, 40, 43.) For the reasons set forth below, the Report-Recommendation is accepted and adopted, Defendants' motion for summary judgment is granted, Plaintiff's motion for reconsideration is denied, and Plaintiff's Amended Complaint is dismissed.

Generally, in his Report-Recommendation, Magistrate Judge Peebles recommended as follows: (1) that Plaintiff's Fourteenth Amendment due process claim against Defendants Chutney and Prack be dismissed because, based on the current record, during the course of his disciplinary hearing Plaintiff was afforded all of the protections required under the Due Process Clause of the Fourteenth Amendment (e.g., written notice of the charges against him, assistance in preparation for a disciplinary hearing, an opportunity to appear at the hearing, a reasonable opportunity to present witnesses and evidence in support of his defense at the hearing, a written decision by the hearing officer explaining his determination, etc.); (2) that Plaintiff's First Amendment retaliation claim against Defendants Parish, VanNess, and Vitale be dismissed based on the lack of record evidence from which a reasonable factfinder could conclude that those three Defendants took adverse action against Plaintiff in retaliation for his filing grievances against them and Corrections Officer D. Walters; and (3) that Plaintiff's motion for reconsideration be denied as untimely and/or unsupported by a showing of cause. (Dkt. No. 43, at Part III.) Plaintiff has not filed an objection to the Report-Recommendation, and the deadline in which to do so has expired. (*See generally* Docket Sheet.)

When, as here, *no* objection is made to a report-recommendation, the Court subjects that report-recommendation to only a *clear error* review. Fed. R. Civ. P. 72(b), Advisory Committee Notes: 1983 Addition. When performing such a "clear error" review, "the court need only

satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Id.*: *see also Batista v. Walker*, 94-CV-2826, 1995 WL 453299, at *1. (S.D.N.Y. July 31, 1995) (Sotomayor, J.) (“I am permitted to adopt those sections of [a magistrate judge’s] report to which no specific objection is made, so long as those sections are not facially erroneous.”) (internal quotation marks and citations omitted).

Based upon a review of this matter, the Court can find no clear error in the Report-Recommendation: Magistrate Judge Peebles employed the proper standards, accurately recited the facts, and reasonably applied the law to those facts. As a result, the Court accepts and adopts the Report-Recommendation for the reasons stated therein. (Dkt. No. 43.)

ACCORDINGLY, it is

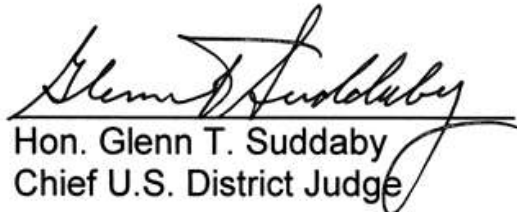
ORDERED that Magistrate Judge Peebles’ Report-Recommendation (Dkt. No. 43) is **ACCEPTED** and **ADOPTED** in its entirety; and it is further

ORDERED that Defendants’ motion for summary judgment (Dkt. No. 36) is **GRANTED**; and it is further

ORDERED that Plaintiff’s motion for reconsideration (Dkt. No. 40) is **DENIED**; and it is further

ORDERED that Plaintiff’s Amended Complaint (Dkt. No. 12) is **DISMISSED** in its entirety.

Dated: September 11, 2015
Syracuse, New York


Hon. Glenn T. Suddaby
Chief U.S. District Judge